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**Bremerton ❖
Kitsap County
Health District**

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TO: Bremerton-Kitsap County Board of Health

FROM: Scott Daniels
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RE: 1) BREMERTON AUTO WRECKING LANDFILL
2) EPA'S SITE INVESTIGATION OF THE OLYMPIC VIEW LANDFILL
3) OUT OF COUNTY WASTE ORDINANCE

To update you on the status of these projects, the following information is provided:

1. Bremerton-Auto Wrecking Landfill

Over the past 14 months, the Health District has issued three separate orders to the property owner, Ms. Lucille Uhinck, requiring her to correct environmental problems at this site. Additionally, Ecology's Water Quality Program issued a Notice of Violation to Ms. Uhinck on February 27, 1998. The most recent Health District order dated March 11, 1998, required the owner to:

- Prepare and implement an approved plan to stabilize the failed landfill slope.
- Prepare and implement an approved plan and timetable to close the landfill.
- Implement measures to prevent any further depositing of solid waste on neighboring properties or rights-of-way, or other illegal dumping.

To date, the property owner has not achieved compliance with any of the three orders and has not demonstrated any ability to comply. The landfill remains a public nuisance and a threat to public health and the environment. Additionally, a further collapse of the landfill may threaten the structural integrity of State Highway 3, the major north/south transportation route in southern Kitsap County.

Recently, the Navy has offered to participate in a partnering arrangement with the Department of Ecology to achieve cleanup of the landfill. This offer was expressed in a May 28, 1998, letter to Ecology from the Navy's Office of General Counsel. The Health District has requested that Ecology work with the Navy to achieve an expeditious cleanup of the Bremerton Auto Wrecking Landfill. Health District staff will continue to monitor this process. The alternative is to pursue a lawsuit against Ms. Uhinck, and potentially other liable parties, with the attendant expense and risk associated with litigation.

2. EPA's Site Investigation of the Olympic View Sanitary Landfill

On May 27, 1998, the Health District received the report, "Olympic View Sanitary Landfill Site Inspection, TDD: 96-10-005", prepared by Ecology and Environment, Inc. (E&E) for the U.S. Environmental Protection Agency's Superfund Technical Assessment and Reponse Team in Seattle. The specific goals of the site investigation were to:

- Determine if the landfill discharges have impacted surface water, sediments, and/or groundwater;
- Evaluate the need for remediation; and
- Determine whether additional sampling/investigation at the site is warranted.

As part of the groundwater assessment portion of the study, the contractor sampled thirteen residential wells upgradient and downgradient from the landfill. Wells were sampled for a wide range of organic, inorganic, and radiochemical parameters. The report states that "...landfill contaminants potentially could impact residential wells. However, the residential well results seem to indicate that only manganese has impacted the wells." Three wells had elevated concentrations of manganese above federal secondary drinking water standards (taste and odor related standards). The report also states that the landfill's impact to downgradient domestic wells is not conclusive. One *upgradient* well in the study was found to contain lead in excess of the federal primary drinking water standard.

The report also states that numerous contaminants were detected in the wetlands adjacent to the landfill. According to the report, however, the impact from the landfill appears to be minimal to the Union River.

A copy of E&E's April 30, 1998, Site Recommendation Memorandum is attached. In part, the memo recommends additional groundwater studies and an emphasis on the remediation and protection of the wetlands. The Health District is currently evaluating the study results and has requested a follow-up meeting with EPA and the Department of Ecology to determine future regulatory responses and permitting requirements. Through a compliance schedule in the landfill's Solid Waste Handling Permit, the Health District is continuing to require the landfill to address the wetlands contamination issue.

3. Out-of-County Waste Ordinance

In 1990, the Board of Health passed Ordinance 7-1990, "An Ordinance Limiting the Disposal of Out-of-County Waste". This ordinance was based upon certain findings, primarily, that the number of solid waste disposal facilities within Kitsap County was limited, and numerous public health and environmental hazards are associated with the creation of a new solid waste disposal facility. The Board of Health found that disposal of out-of-county waste at Kitsap County facilities was likely to shorten the life of waste disposal facilities. It could also create

an emergency need to open additional facilities which were not planned and, accordingly, were not a part of the Kitsap County Comprehensive Solid Waste Management Plan. The design capacity for mixed municipal solid waste facilities operating at the time was based on growth projections only for Kitsap County.

Based on these findings, Ordinance 7-1990 limited the disposal of out-of-county mixed municipal solid waste to no more than 5% of the total. Out-of-county problem wastes were limited to no more than that needed for annual landfill cover requirements. Solid waste facilities can accept more waste if they can show that there will be no detrimental impact on waste facility capacity. Olympic View Sanitary Landfill's (OVSL's) annual Health District permit includes a condition that reflects these limits. OVSL has challenged this condition, asserting that it violates the dormant commerce clause of the United States Constitution. The dormant commerce clause is a legal principle that prohibits states and local governments from passing regulations that impose restrictions on interstate commerce. The Health District has asked its attorneys to review this assertion.

Our attorneys' preliminary evaluation is that the Ordinance does not violate the constitution and is legally defensible. Ordinance 7-1990's purpose is not to regulate *interstate* commerce in any way. It applies specifically only to *in-state* waste. Ordinance 7-1990 was enacted to protect public health, safety and welfare in Kitsap County by ensuring adequate capacity for garbage disposal to meet the reasonably projected county need. There are several cases in which federal courts have upheld similar regulations as valid under the commerce clause. A number of those cases were denied certiorari (review) by the United States Supreme Court, which is further indication that the Supreme Court would uphold our ordinance if it were challenged to that extent.

On balance, the Health District has decided to retain the out-of-county waste restriction condition in the OVSL's 1998-99 permit. Nevertheless, the Board of Health should be apprised that there is a chance that OVSL will pursue a challenge of the constitutionality of this condition in court. If so, the Board of Health will be fully briefed and we will seek the Board's direction at that time.